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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

APR 26 1993

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In re Applications of

DAVID A. RINGER

ASF BROADCASTING
CORPORATION

WILBURN INDUSTRIES, INC.

KYONG JA MATCHAK

SHELLEE F. DAVIS

WESTERVILLE BROADCASTING
COMPANY LIMITED PARTNERSHIP

OHIO RADIO ASSOCIATES, INC.

MM Docket No. 93-107

File No. BPH-911230MA

File No. BPH-911230MB

File No. BPH-911230MC

File No. BPH-911230MF

File No. BPH-911231MA

File No. BPH-911231MB

File No. BPH-911231MC

For Construction Permit for an FM
Station on Channel 280A in
Westerville, Ohio

To: Administrative Law Judge
Walter C. Miller

OPPOSITION TO MOTION TO CERTIFY

Wilburn Industries, Inc. ("Wilburn"), by its attorneys,
hereby submits its Opposition to the "Motion to Certify Questions
to the Commission" filed on April 22, 1993, by Ohio Radio
Associates, Inc. ("ORA"). In support thereof, it states the
following:

In its Motion, ORA requests that the presiding Judge certify
a question of law -- which was addressed and resolved in the
Hearing Designation Order ("HDO") -- to the Commission for its

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Section 1.115(e)(3) of the Commission's rules states in

Thus, if the Judge were to grant the relief requested by ORA, such action would unquestionably result in a delay of prolonged, indefinite duration, while the Commission considered the matter before it. Throughout that period, the proceeding below would necessarily be maintained in suspended animation. If, as Wilburn expects, the Commission upholds the HDO (or rules that certification was inappropriate), the comparative hearing still would have to be conducted, commencing months later than initially scheduled. Moreover, even if ORA wins its argument, it would not be the sole remaining applicant, so that after the release of a Commission ruling, the presiding Judge would have to conduct a full comparative hearing in any event.

On the other hand, were the Judge to deny ORA's request, the hearing could be promptly conducted and concluded, leaving ORA with a full opportunity to raise the matter before the Commission at the appropriate time. Because each party which pursued its case to that point will have had full notice of ORA's contentions, none would be unfairly prejudiced by an adverse Commission ruling issued at that time. Furthermore, reversal of the HDO after completion of the hearing would not require additional hearings pursuant to a remand. A prime reason for obtaining a ruling by the Commission prior to hearing therefore does not exist in this case.

In sum, immediate consideration by the Commission of the question raised by ORA would not "materially expedite the ultimate resolution of the litigation." To the contrary, it would only delay such resolution. ORA's complete failure to satisfy the fundamental test set forth in Section 1.115(e)(3) and the obvious fallacy of its unsupported contention in that regard mandate the prompt denial of its Motion.

Respectfully submitted,
WILBURN INDUSTRIES, INC.

By:


Eric S. Kravetz

Brown, Nietert & Kaufman, Chtd.
1920 N Street, N.W., Suite 660
Washington, D.C. 20036
(202) 887-0600

April 26, 1993

Its Attorneys

CERTIFICATE OF SERVICE

I, Beverles Jenkins, a secretary in the law firm of Brown, Nietert & Kaufman, Chartered, do hereby certify that on this 26th day of April, 1993, I have caused to be mailed U.S. mail, postage prepaid, a copy of the foregoing "Opposition to Motion to Certify" to the following:

James Shook, Esquire
Hearing Branch
Federal Communications Commission
Room 7212
2025 M Street, N.W.
Washington, D.C. 20554

Arthur V. Belenduik, Esquire
Smithwick & Belenduik, P.C.